

***United States Court of Appeals
for the Second Circuit***

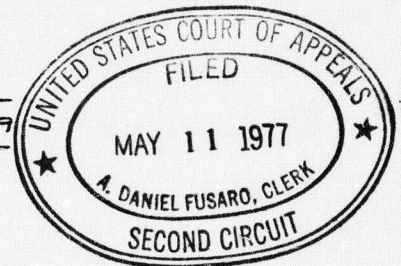


**BRIEF FOR
APPELLANT**

77-7099

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

DOCKET NUMBER 77-7099



BISWANATH HALDER

V

INTERNATIONAL BUSINESS MACHINES CORPORATION

BRIEF FOR PLAINTIFF-APPELLANT

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

DOCKET NUMBER 77-7099

BISWANATH HALDER,

PLAINTIFF-APPELLANT,

v

INTERNATIONAL BUSINESS MACHINES CORPORATION,

DEFENDANT-APPELLEE.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NEW YORK

BRIEF FOR PLAINTIFF-APPELLANT

BISWANATH HALDER

APPELLANT PRO SE

173-17 65TH AVENUE

FLUSHING, NY 11365

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ISSUES PRESENTED

1. WHETHER LEAVE TO AMEND A PLEADING IS FREELY GIVEN WHEN JUSTICE SO REQUIRES.
2. WHETHER OPEN DISCLOSURE OF ALL POTENTIALLY RELEVANT INFORMATION IS FUNDAMENTAL IN THE ADVERSARY SYSTEM OF JUSTICE.

FARTS

THE PLAINTIFF-APPELLANT WAS BORN IN INDIA, OF INDIAN PARENTAGE. HE HOLDS A BACHELOR'S DEGREE IN ELECTRICAL ENGINEERING FROM THE UNIVERSITY OF CALCUTTA. HE IMMIGRATED TO THIS GREAT COUNTRY IN MAY 1969.

PRIOR TO COMING TO THE UNITED STATES, THE PLAINTIFF HAD GAINED TWO YEARS OF EXPERIENCE IN COMPUTER SOFTWARE WITH TWO REPUTABLE COMPUTER MANUFACTURERS IN ENGLAND. HE WAS ADMITTED TO THIS COUNTRY AS AN ALIEN WHO IS A MEMBER OF A PROFESSION FOR WHICH THERE IS AN AVAILABLE MARKET FOR HIS PROFESSIONAL SERVICES. 8 USCA 1153 (2)(3).

EVER SINCE THE PLAINTIFF ARRIVED IN THE LAND OF OPPORTUNITY, HE HAS BEEN LOOKING FOR A JOB.

THE PLAINTIFF, IN SEPTEMBER 1974,

COMMENCED INSTANT ACTION AGAINST THE DEFENDANT, INTERNATIONAL BUSINESS MACHINES CORPORATION (IBM), BY FILING A COMPLAINT AT THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF NEW YORK.

IN THE COMPLAINT THE PLAINTIFF CHARGED THAT THE DEFENDANT DENIED HIM EQUAL EMPLOYMENT OPPORTUNITIES AS PROVIDED BY TITLE VII OF THE CIVIL RIGHTS ACT OF 1964, AS AMENDED BY THE EQUAL EMPLOYMENT OPPORTUNITY ACT OF 1972, 42 USCA 20002 ET SEQ., BASED ON ITS FAILURE OR REFUSAL TO EMPLOY HIM AS A PROGRAMMER-ANALYST BECAUSE OF HIS NATIONAL ORIGIN.

AROUND THE SAME TIME THE PLAINTIFF COMMENCED SIX OTHER ACTIONS AGAINST COMPANIES MAKING SUBSTANTIALLY THE SAME ALLEGATIONS ASSERTED AGAINST THE DEFENDANT.

SINCE APRIL 1975 THE DISTRICT COURT, IN ACTIVE CONCERT AND CO-OPERATION WITH THE

MULTI-NATIONAL AND MULTI-BILLION DOLLAR
CORPORATE DEFENDANTS, HAS BEEN, IN EVERY
POSSIBLE AND EVEN IN SOME IMPOSSIBLE WAYS,
TRYING TO DESTROY* THE POOR AND HELPLESS
PLAINTIFF.

* "FINAL RESPONSIBILITY FOR [DESTRUCTION OF
THOSE WHO TRY TO ENFORCE] TITLE VII IS
VESTED WITH FEDERAL COURTS." ALEXANDER V
GARDNER-DENVER COMPANY, 1974, 415 U.S. 36, 44,
96 S.Ct. 1011, 1018.

ARGUMENT

THE APPELLANT HAS BEEN SEEKING EMPLOYMENT WITH THE APPELLEE AS A PROGRAMMER-ANALYST EVER SINCE HE IMMIGRATED TO THE UNITED STATES (DS, ^{**} PARA 5). AND ALTHOUGH HIS BACKGROUND — TRAINING IN ELECTRICAL ENGINEERING AND EXPERIENCE IN ASSEMBLY LANGUAGE PROGRAMMING — PERFECTLY MATCHED A GREAT MANY OF THE APPELLEE'S JOB REQUIREMENTS OVER THE LAST EIGHT YEARS, HE HAS NEVER BEEN OFFERED A JOB. THE APPELLEE CONTENTS, HOWEVER, THAT THE PROGRAMMERS AND ANALYSTS HIRED DURING THIS PERIOD POSSESSED QUALIFICATIONS SUPERIOR TO THOSE OF THE APPELLANT. IN THESE CIRCUMSTANCES IT IS IMPERATIVE THAT THE APPELLANT BE GIVEN A FULL AND FAIR OPPORTUNITY TO AVAIL OF HIS GUARANTEED RIGHT IN A COURT OF LAW, NOT ONLY TO REDRESS HIS OWN INJURIES, BUT ALSO TO VINDICATE "A POLICY THAT CONGRESS

CONSIDERED OF THE HIGHEST PRIORITY." NEWMAN V
PIGGIE PARK ENTERPRISES, 1968, 390 U.S. 400, 402,
88 S.Ct. 964, 966.

** REFERENCE TO THE RECORD WILL BE MADE BY
DOCUMENT NUMBER ON THE DOCKET SHEET,
AND BY PAGE : "D", P."

POINT I

LEAVE TO AMEND A PLEADING IS FREELY
GIVEN WHEN JUSTICE SO REQUIRES

THE APPELLANT IS AN ENGINEER, AND A LAYMAN IN MATTERS OF LAW. THE SUPREME COURT HAS LONG RECOGNIZED THAT "EVEN THE INTELLIGENT AND EDUCATED LAYMAN HAS SMALL AND SOMETIMES NO SKILL IN THE SCIENCE OF LAW." POWELL V ALABAMA, 1932, 287 U.S. 45, 69. 53 S. CT. 55, 64.

THE APPELLANT'S ASSUMPTION WAS THAT THE ORIGINAL CHARGE OF DISCRIMINATION ON THE BASIS OF NATIONAL ORIGIN DID IN FACT TAKE INTO ACCOUNT HIS BEING NON-WHITE (COLOR), NON-CHRISTIAN (RELIGION), AND A NON-CITIZEN (ALIENAGE). WHEN THE APPELLANT REALIZED THE DEFICIENCY IN HIS COMPLAINT, HE MOVED TO AMEND THE COMPLAINT, PURSUANT TO RULE 15 OF THE FEDERAL RULES OF CIVIL PROCEDURE, TO INCLUDE A CAUSE OF ACTION UNDER THE CIVIL

RIGHTS ACT OF 1886, AS AMENDED BY THE
ENFORCEMENT ACT OF 1870, 42 USCA 1981, AS
WELL AS TO ADD ADDITIONAL GROUNDS OF
DISCRIMINATION (D 21).

RULE 15(a) OF THE FEDERAL RULES OF CIVIL
PROCEDURE PROVIDES, IN PERTINENT PART, THAT "A
PARTY MAY AMEND HIS PLEADING ONLY BY LEAVE
OF COURT . . . ; AND LEAVE SHALL BE FREELY
GIVEN WHEN JUSTICE SO REQUIRES."

THE APPLICABLE STANDARD FOR DETERMINING
WHETHER TO GRANT LEAVE FOR THE FILING OF AN
AMENDED COMPLAINT HAS BEEN STATED BY THE
SUPREME COURT :

"THE APPLICABLE RULE IS RULE 15 OF THE
FEDERAL RULES OF CIVIL PROCEDURE, WHICH
WAS DESIGNED TO FACILITATE THE AMENDMENT
OF PLEADINGS EXCEPT WHERE PREJUDICE TO THE
OPPOSING PARTY WOULD RESULT." UNITED STATES
V HOUGHAM, 1960, 364 U.S. 310, 316, 81 S.Ct. 13, 18;
ACCORD, ZENITH RADIO CORPORATION V HAZELTINE

RESEARCH, INC., 1971, 401 U.S. 321, 330-1, 91 S.Ct. 795, 802

THE SUPREME COURT ELABORATED ON THIS STANDARD IN FOMAN V DAVIS, 1962, 371 U.S. 178, 182, 83 S.Ct. 222, 230 :

"IN THE ABSENCE OF ANY APPARENT OR DECLARED REASON — SUCH AS UNDUE DELAY, BAD FAITH, OR DILATORY MOTIVE ON THE PART OF THE MOVANT, REPEATED FAILURE TO CURE DEFICIENCIES BY AMENDMENTS PREVIOUSLY ALLOWED, UNDUE PREJUDICE TO THE OPPOSING PARTY BY VIRTUE OF THE ALLOWANCE OF THE AMENDMENT, FUTILITY OF AMENDMENT, ETC. — THE LEAVE SOUGHT SHOULD, AS THE RULES REQUIRE, BE 'FREELY GIVEN.'"

NONE OF THE FACTORS MILITATING AGAINST GRANTING LEAVE TO AMEND AS STATED ABOVE ARE PRESENT IN THE INSTANT ACTION.

FURTHERMORE, THE APPELLANT RESPECTFULLY POINTS OUT THAT THE "LEGISLATIVE ENACTMENTS IN [THE AREA OF EMPLOYMENT DISCRIMINATION]

HAVE LONG EVINCED A GENERAL INTENT TO ACCORD PARALLEL OR OVERLAPPING REMEDIES AGAINST DISCRIMINATION," ALEXANDER V GARDNER-DENVER COMPANY, 1974, 415 U.S. 38, 42, 94 S.Ct. 1011, 1019, AND THAT "THE FILING OF A TITLE VII CHARGE AND RESORT TO TITLE VII'S ADMINISTRATIVE MACHINERY ARE NOT PREREQUISITES FOR THE INSTITUTION OF A SECTION 1981 ACTION." JOHNSON V RAILWAY EXPRESS AGENCY, 1975, 421 U.S. 454, 460, 95 S.Ct. 1716, 1720.

INSPIRE OF THAT THE TRIAL COURT DENIED LEAVE TO THE APPELLANT TO AMEND THE COMPLAINT TO INCLUDE A CAUSE OF ACTION UNDER SECTION 1981, AND ALSO TO ADD ADDITIONAL GROUNDS OF DISCRIMINATION (D 38), ALTHOUGH THE APPELLANT — WHO IS NEITHER WHITE NOR A CITIZEN OF THE UNITED STATES, BUT A RESIDENT ALIEN WHO FALLS WITHIN THE JURISDICTION OF THE UNITED STATES — HAS THE SAME RIGHT TO MAKE AND ENFORCE EMPLOYMENT CONTRACTS AS IS

ENJOYED BY WHITE CITIZENS. MCDONALD V SANTA
FE TRAIL TRANSPORTATION COMPANY, 1976, 427 U.S. 273,
285-96, 96 S.Ct. 2574, 2580-6; TAKAHASHI V FISH &
GAME COMMISSION, 1948, 334 U.S. 410, 419, 68 S.Ct.
1138, 1142-3; UNITED STATES V THIND, 1923, 261 U.S.
204, 209, 43 S.Ct. 338, 340.

"OF COURSE, THE GRANT OR DENIAL OF AN
OPPORTUNITY TO AMEND IS WITHIN THE DISCRETION
OF THE DISTRICT COURT" FOMAN V DAVIS,
1962, 371 U.S. 178, 182, 83 S.Ct. 227, 230. ACCORD, ZENITH
RADIO CORPORATION V HAZELTINE RESEARCH, INC., 1971,
401 U.S. 321, 330, 91 S.Ct. 795, 802; THOMSEN V
EAYSER, 1917, 243 U.S. 66, 89, 37 S.Ct. 353, 360;
TILTON V COFIELD, 1876, 93 U.S. (3 OTTO) 163, 166.

BUT SUCH A DISCRETIONARY CHOICE IS NOT
LEFT TO A COURT'S "INCLINATION, BUT TO ITS
JUDGMENT; AND ITS JUDGMENT IS TO BE GUIDED
BY SOUND LEGAL PRINCIPLES." UNITED STATES V
BURR, 1807, 25 FEDERAL CASES NO. 16, 6920, PP 30, 35
(MARSHALL, C.J.).

"OUTRIGHT REFUSAL TO GRANT THE LEAVE [TO AMEND THE COMPLAINT] WITHOUT ANY JUSTIFYING REASON APPEARING FOR THE DENIAL IS NOT AN EXERCISE OF DISCRETION ; IT IS MERELY ABUSE OF THAT DISCRETION AND INCONSISTENT WITH THE SPIRIT OF THE FEDERAL RULES." FOMAN V DAVIS, 1962, 371 U.S. 178, 182, 83 S.Ct. 227, 230.

THE APPELLANT PRAYS THAT THE COURT BE MINDFUL OF THE PURPOSE OF PLEADINGS WHICH IS "TO FACILITATE A PROPER DECISION ON THE MERITS," CONLEY V GIBSON, 1957, 355 U.S. 41, 48, 78 S.Ct. 99, 103, AND NOT TO ERECT FORMAL AND BURDENSOME IMPEDIMENTS IN THE LITIGATION PROCESS.

SINCE IT IS TRANSPARENT THAT THE COURT BELOW DEFEATED THE ENDS OF JUSTICE IN DENYING LEAVE TO THE APPELLANT TO AMEND THE COMPLAINT, THE SAID DECISION SHOULD BE REVERSED.

POINT II OPEN DISCLOSURE OF ALL POTENTIALLY
RELEVANT INFORMATION IN THE ADVERSARY
SYSTEM OF JUSTICE IS BOTH FUNDAMENTAL
AND COMPREHENSIVE.

CONGRESS ENACTED TITLE VII OF THE CIVIL RIGHTS ACT OF 1964 "TO ACHIEVE EQUALITY OF EMPLOYMENT OPPORTUNITIES AND REMOVE BARRIERS THAT HAVE OPERATED IN THE PAST TO FAVOR AN IDENTIFIABLE GROUP OF WHITE [APPLICANTS] OVER OTHER [APPLICANTS FOR EMPLOYMENT]". GRIGGS V DUKE POWER COMPANY, 1971, 401 U.S. 424, 429-30, 91 S.Ct. 849, 853.

HOWEVER, "THE ACT DOES NOT COMMAND THAT ANY PERSON BE HIRED SIMPLY BECAUSE HE . . . IS A MEMBER OF A MINORITY GROUP." ID., 401 U.S. at 430-1, 91 S.Ct. at 853.

"INDEED, THE VERY PURPOSE OF TITLE VII IS TO PROMOTE HIRING ON THE BASIS OF JOB QUALIFICATIONS, RATHER THAN ON THE BASIS OF

[COLOR, OR RELIGION, OR NATIONAL ORIGIN]." ID.,
401 U.S. at 434, 91 S.Ct. at 855.

THE INTERROGATORIES PROPOUNDED BY THE
APPELLANT PRIMARILY CALL FOR THE QUALIFICATIONS
OF THE PROGRAMMERS AND ANALYSTS HIRED BY THE
APPELLEE SINCE 1969 (D 8). YET THE APPELLEE
OBJECTED TO THOSE INTERROGATORIES ON GROUNDS
OF BURDENSOMENESS, IRRELEVANCE, ETC. (D 18).
AND THE APPELLANT'S EFFORT IN COMPELLING THE
APPELLEE TO ANSWER THE INTERROGATORIES WAS
FRUSTRATED (D 20, 22, 25, 26, 27, 28, 30 & 32).

THE APPELLANT THEN MADE A REQUEST FOR
PRODUCTION OF DOCUMENTS, PURSUANT TO RULE 34
OF THE FEDERAL RULES OF CIVIL PROCEDURE, TO
ENABLE HIM TO EXAMINE AND COPY THE PERSONNEL
RECORDS OF THE COMPUTER ENGINEERS, PROGRAMMERS
AND ANALYSTS HIRED BY THE APPELLEE SINCE JUNE
1, 1969 (D 31). THE APPELLEE FURTHER OBJECTED
TO PRODUCTION OF SUCH DOCUMENTS (D 36). AND
THE TRIAL COURT SUSTAINED THOSE OBJECTIONS (D 41).

IT IS WELL RECOGNIZED THAT A LAWSUIT IS NOT A CONTEST IN CONCEALMENT, AND THAT THE ^{PROCESS} DISCOVERY WAS ESTABLISHED SO THAT "EITHER PARTY MAY COMPEL THE OTHER TO DISGORGE WHATEVER FACTS HE HAS IN HIS POSSESSION."

HICKMAN V TAYLOR, 1947, 329 U.S. 495, 507, 67 S.Ct. 385, 392.

THE BROAD SCOPE OF DISCOVERY, AS ARTICULATED IN THE TEXT, IS ALSO REFLECTED IN AN OPINION BY JUDGE LEAHY SHORTLY AFTER THE ADOPTION OF THE FEDERAL RULES OF CIVIL PROCEDURE :

"UNLESS IT IS PALPABLE THAT THE EVIDENCE SOUGHT CAN HAVE NO POSSIBLE BEARING UPON THE ~~ISSUES~~, THE SPIRIT OF THE NEW RULES CALLS FOR EVERY RELEVANT FACT, HOWEVER REMOTE, TO BE BROUGHT OUT FOR THE INSPECTION NOT ONLY OF THE OPPOSING PARTY BUT FOR THE BENEFIT OF ^{THE} COURT WHICH IN DUE COURSE CAN ELIMINATE THOSE FACTS WHICH ARE NOT TO BE CONSIDERED IN DETERMINING THE ULTIMATE ISSUES."

HERCULES POWDER COMPANY V ROHM & HAAS

COMPANY, 3 F.R.D. 302,304, DC DE 1943.

MOREOVER, THE SUPREME COURT MADE IT CLEAR THAT THE "DISCOVERY RULES ARE TO BE ACCORDED A BROAD AND LIBERAL TREATMENT," AND THAT "MUTUAL KNOWLEDGE OF ALL THE RELEVANT FACTS GATHERED BY BOTH PARTIES IS ESSENTIAL TO PROPER LITIGATION." HICKMAN V TAYLOR, OUTFAR, 329 U.S. AT 507, 67 S.Ct. AT 392.

BESIDES, "CIVIL TRIALS IN THE FEDERAL COURTS NO LONGER NEED BE CARRIED ON IN THE DARK." ID., 329 U.S. AT 501, 67 S.Ct. AT 389. THEREFORE, THE SUPREME COURT MANDATED THAT "ON . . . [TRIAL] [THE APPELLANT] MUST BE GIVEN A FULL AND FAIR OPPORTUNITY TO DEMONSTRATE BY COMPETENT EVIDENCE THAT THE PRESUMPTIVELY VALID REASONS FOR HIS REJECTION WERE IN FACT [PRETEXTUAL OR] A COVERUP FOR A . . . DISCRIMINATORY DECISION." McDONNELL DOUGLAS CORPORATION V GREEN, 1973, 411 U.S. 792, 805, 93 S.Ct. 1817, 1826.

THE SUPREME COURT HAS ALSO GIVEN CLEAR GUIDELINES ON THE COMPETENT EVIDENCE RELEVANT TO A JOB-BIAS COMPLAINANT TO ANY SHOWING OF PRETEXTUALITY :

"STATISTICS AS TO [THE EMPLOYER'S] EMPLOYMENT POLICY AND PRACTICE MAY BE HELPFUL TO A DETERMINATION OF WHETHER [THE EMPLOYER'S] REFUSAL TO [HIRE] [THE APPLICANT] . . . CONFORMED TO A GENERAL PATTERN OF DISCRIMINATION AGAINST [MINORITIES]". 10., 411 U.S. at 805, 93 S.Ct. at 1825.

THE INFORMATION SOUGHT BY THE APPELLANT THROUGH INTERROGATORIES AND PRODUCTION OF DOCUMENTS CALLS FOR THE STATISTICS AS TO THE APPELLEE'S EMPLOYMENT POLICY AND PRACTICE. FAR FROM BEING BURDENSOME OR IRRELEVANT, THE INTERROGATORIES AND THE REQUESTED DOCUMENTS ARE ENTIRELY "RELEVANT TO THE SUBJECT MATTER INVOLVED IN THE PENDING ACTION," AND THAT "THE INFORMATION SOUGHT APPEARS REASONABLY

CALCULATED TO LEAD TO THE DISCOVERY OF
ADMISSIBLE EVIDENCE." RULE 26(b)(1), FEDERAL
RULES OF CIVIL PROCEDURE. SEE ALSO
TABATECHNIK V G.D. SEARLE & COMPANY, 67 F.R.D.
49,54, DC NJ 1975; UNITED STATES V INTERNATIONAL
BUSINESS MACHINES CORPORATION, 66 F.R.D. 215,218,
SD NY 1974; SAYRE V ABRAHAM LINCOLN
FEDERAL SAVINGS & LOAN ASSOCIATION, 65 F.R.D.
379,382, ED PA 1974; ROTO-FINISH COMPANY V
ULTRAMATIC EQUIPMENT COMPANY, 60 F.R.D. 571,572,
ND IL 1973; FRANKS V NATIONAL DAIRY PRODUCTS
CORPORATION, 41 F.R.D. 234,238, WD TX 1966;
UNITED STATES V A.B. DICK COMPANY, 7 F.R.D.
442,443, ND OH 1947; KAPLAN V INTERNATIONAL
ALLIANCE OF THEATRICAL AND STAGE EMPLOYEES,
525 F.2D 1354,1358, CA 9 1975; RODRIGUEZ V
EAST TEXAS MOTOR FREIGHT, 505 F.2D 40,53,
CA 5 1974; JONES V LEE WAY MOTOR FREIGHT,
431 F.2D 245,247, CA 10 1970; UNITED STATES V
PROCTER & GAMBLE COMPANY, 1958, 356 U.S. 677,

882-3, 78 S.Ct. 983, 986-7.

THE COURT SHOULD BEAR IN MIND THAT "THE NEED TO DEVELOP ALL RELEVANT FACTS IN THE ADVERSARY SYSTEM IS BOTH FUNDAMENTAL AND COMPREHENSIVE." UNITED STATES V NIXON, 1974, 418 U.S. 683, 709, 94 S.Ct. 3090, 3108.

IN ADDITION, "THE EXPERIENCE OF THE FEDERAL COURTS OVER THE LAST TWO DECADES HAS BEEN THAT . . . DISCRIMINATION IN EMPLOYMENT . . . IS OFTEN SUBTLE AND NOT EASILY PROVED. THE CONSEQUENCES OF SUCH DISCRIMINATION ARE MOST GRAVE, BOTH FOR THE INDIVIDUAL VICTIM AND FOR SOCIETY AT LARGE." BOOTH V PRINCE GEORGE'S COUNTY, MARYLAND, 66 F.R.D. 466, 473, DC MD 1975.

THEREFORE, THE NECESSITY FOR LIBERAL DISCOVERY TO CLARIFY THE COMPLEX ISSUES ENCOUNTERED IN LITIGATION SEEKING TO REDRESS EMPLOYMENT DISCRIMINATION HAS BEEN WIDELY RECOGNIZED. BURNS V THIOKOL CHEMICAL

CORPORATION, 483 F.2d 300, 2A 5 1973.

IT IS A WELL-ESTABLISHED DOCTRINE THAT THE SCOPE AND CONDUCT OF DISCOVERY ARE WITHIN THE SOUND DISCRETION OF THE TRIAL JUDGE. BAKER V FLE INVESTMENT, 470 F.2d 778, 781, 2A 2 1972, CERT. DEN. 1973, 411 U.S. 966, 93 S.Ct. 2147; MONTECATINI EDISON S.P.A. V E. I. DU PONT DE NEMOURS & COMPANY, 434 F.2d 70, 72, 2A 3 1970; SOUTHERN RAILWAY COMPANY V LANHAM, 403 F.2d 119, 126, 2A 5 1968; TIEDMAN V AMERICAN PIGMENT CORPORATION, 253 F.2d 803, 808, 2A 4 1958; BANK OF AMERICA NATIONAL TRUST & SAVINGS ASSOCIATION V HAYDEN, 231 F.2d 595, 806, 2A 9 1956; SHER V DE HAVEN, 199 F.2d 777, 781, 2A DE 1952; ATLANTIC GREYHOUND CORPORATION V LAURITZEN, 182 F.2d 540, 542, 2A 6 1950.

"BUT THE JUDGE'S DISCOVERY RULINGS, LIKE HIS OTHER PROCEDURAL DETERMINATIONS, ARE NOT ENTIRELY SACROSANCT. IF HE FAILS

TO ADHERE TO THE LIBERAL SPIRIT OF THE RULES,
[THE APPELLATE COURT] MUST REVERSE." BURNS
V THIOKOL CHEMICAL CORPORATION, 404 F.2d 483
A.2d at 305.

THE APPELLANT PRAYS THAT THE COURT
BE MINDFUL THAT "THE VERY INTEGRITY OF
THE JUDICIAL SYSTEM AND PUBLIC CONFIDENCE
IN THE SYSTEM DEPEND ON FULL DISCLOSURE
OF ALL THE FACTS, WITHIN THE FRAMEWORK OF
THE RULES OF EVIDENCE." UNITED STATES V
NIXON, 418 U.S. at 709, 94 S.Ct. at 3108.

SINCE IT IS TRANSPARENT THAT THE COURT
BELOW DEFEATED THE ENDS OF JUSTICE IN
DENYING DISCOVERY TO THE APPELLANT, THE
SAID DECISION SHOULD BE REVERSED.

CONCLUSION

THE JUDGMENT APPEALED FROM SHOULD, IN
ITS ENTIRETY, BE REVERSED.

RESPECTFULLY SUBMITTED.

Biswanath Halder

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DATED : Queens, New York

APRIL 23, 1977

D. C. 109-5

APPEAL

MISHLER, J

TITLE OF CASE

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~~173-17~~ 173-17 65th Ave

Fresh Meadows, N.Y. 1136

For Defendant: SEWARD & MYSSSEL

63 Wall Street

N.Y., N.Y. 10005

248-2800

BASIS OF ACTION: CIVIL RIGHTS-JOB DISCRIMINATION
SEeks: UNINDUCTIVE BELIEF

JURY TRIAL CLAIMED

ON

[illegible]

ABSTRACT OF COSTS

RECEIPTS, REMARKS, ETC.

[illegible]

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74C 1307

HALDER VS. INTERN. BUSINESS MACHINES CORP.

DATE	FILINGS—PROCEEDINGS	AMOUNT REPORTED IN EMOLUMENT RETURNS	
9/25/74	By MISHLER, CH. J. - Order dated Sept. 12, 1974 filed that this case is to be filed in forma pauperis.	1	
9/25/74	Complaint filed. Summons issued.	2	18
10/16/74	Summons read and filed. Executed.	3	
11/4/74	Answer of deft filed.	4	
1/7/75	Notice of Motion, ret. 1/17/75 filed re: for an order granting the plttf to leave to amend its complaint, etc.	5	
1-16-75	Deft's memorandum in opposition to plttf's motion for leave to amend the complaint filed.	6	
1-16-75	Affidavit of Kenneth J. Kelly filed.	7	
1/17/75	Before MISHLER, CH. J. - Case called Motion granting the plttf leave to amend the complaint-Decision reserved.		
2-13-75	Plttf's interrogatories to deft filed.	8	
2-24-75	By MISHLER, CH. J. -Memorandum of Decision and Order dtd 2-24-75 granting plttf leave to amend complaint filed.	9	
3-18-75	Stipulation dtd 3-10-75 extending time to answer amended complaint to 3-24-75, etc. filed.	10	
3-26-75	Answer to amended complaint filed.	11	
4-1-75	Stipulation dtd 3-27-75 extending deft's time to answer interrogatories from 3-31-75 to and including 4-14-75 filed.	12	
4-15-75	Stipulation dtd 4-9-75 extending time for deft to answer interrogatories to 4-30-75 filed.	13	
5-6-75	By MISHLER, CH. J. --Order dtd 5-5-75 that all proceedings are stayed pending the decision on appeal, ^{in RCA Action} that deft's time to answer plttf's interrogatoires is extended to the fifteenth day after service on deft by plttf of notice of the disposition of the appeal of the RCA Action filed.	14	
2-9-76	Cony of letter dtd 2-5-76 from Ch. J. Mishler filed re setting date for trial: Feb. 10, 1976 at 10 A.M.	15	
2-10-76	Before MISHLER, J. - Case calle.d. Adj. without date for trial pending completion of discovery		
2-17-76	Notice to take deposition of IBM filed.	16	
4-22-76	Deposition of B. Halder filed.	17	
4-22-76	Answers and objections to interrogatories filed.	18	
4-22-76	Exhibits of deposition filed.	19	
5-11-76	Sten. transcript dtd. 2-10-76 filed in 74-C-1069		
6-29-76	Notice of motion xxxx for an order compelling deft to answer interroga. filed.	20	CEX

DATE	PROCEEDINGS
7-13-76	Motion for an order re to amend complaint ret 8-6-76 filed. 21
7-28-76	Stip. that plttf's motion for an order pursuant to Rule 37(a) shall be brought for hearing on 8-6-76 filed. 22
8-4-76	Affidavit with memo of law in opposition to motion for leave to amend filed. (23/24)
8-5-76	Affidavit in opposition to motion to compel answers to interroga with memo of law filed. (25/26)
8-6-76	Before MISHLER, J.- Case called for motion to amend complaint Motion argued Deft to make available certain files to plttf as indicated on the record Motion to amend complaint submitted Decision reserved
8-18-76	Letter dtd. 8-16-76 from K. Kelly to Judge Mishler re: inspection of files by plttf filed. (27)
8-18-76	By MISHLER, J.- Order that deft shall produce to plttf documents etc., and the documents shall be kept confidential etc., filed. (28)
8-26-76	Plttf's supp interroga filed. (29)
9-1-76	Motion from plttf to pay for transcripts filed in 74-C-1375 ---
9-1-76	Letter dtd. 8-26-76 from B. Halder to Judge Mishler filed. (30)
9-23-76	By MISHLER, J.- Order dtd. 9-22-76 granting plttf's motion for free trans filed in 74-C-1069. Copy of order sent to Court Reporter and plttf ----
9-29-76	Request to produce documents filed. (31)
9-29-76	Copy of letter dtd 9-25-76 to J. Mishler from plttf re rule 34. (32)
10-18-76	Stipulation dtd. 10-12-76 extending time for deft to answer plttf's supp interroga to 10-19-76 and to 10-12-76 filed. (33/34)
10-20-76	Answers etc., to supp interroga of plttf filed. (35)
11-9-76	Response to request to produce filed. (36)
11-9-76	Plttf's motion to compel deft to produce documents ret. 12-3-76 filed. (37)
11-23-76	By MISHLER, CH. J.-Memo of Decision & order dtd 11-22-76 denying plttf's motion to amend his complaint filed. (38)
11-23-76	Stenographer's transcript dated 8-6-76 filed. (placed in 74C1375)
12-2-76	Affidavit in opposition to motion to compel production of documents filed. (39)
12-2-76	Deft's memo in opposition to plttf's motion to compel production of documents filed. (40)
12-3-76	Before MISHLER, J.- Case called for plttf's motion to produce documents and submitted and decision reserved

DATE	PROCEEDINGS
12-17-76	By MISHLER, CH.J-Memo of decision & order dtd 12-16-76 denying pltff's motion to compel IBM to produce filed. (41)
12-22-76	Before MISHLER, CH.--Case called. Trial ordered & begun--non jury. Pltff refused to try his case. Deft ready for trial. Pltff defaulted Trial concluded. Clerk to enter judgment. Court finds in favor of t deft and against the pltff dismissing the complaint together with costs when taxed. Findings of fact and conclusions of law entered on the record. ===
12-23-76	Judgment dtd 12-22-76 that the plaintiff take nothing of the defendant and that the complaint is dismissed with costs filed. (42)
1/5/77	Motion for govt to pay for transcript filed. See docket 1375 (43)
#47	
1-21-77	Notice of appeal filed. Conv to C of A. (44)
1-24-77	Bill of costs filed. Costs taxed in the sum of \$540.20 as against pltff. (45)
1-26-77	Stenographer's transcript dtd 12-22-76 filed. (46)
3-7-77	CIVIL APPEAL SCHEDULING ORDER (47)

CLOSED

FILED
IN CLERK'S OFFICE
U.S. DISTRICT COURT E.D. N.Y.

★ DEC 23 1976 ★

TIME A.M.
P.M.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

----- X
BISWANATH HALDER, :
Plaintiff, :
-against- :
IBM CORPORATION, :
Defendant. :
----- X

JUDGMENT

74-C-1377

W. F. ...

This action having come on for trial before the Court, Honorable Jacob Mishler, United States District Judge, presiding, and the plaintiff having refused to try his case and having been found in default, and the Court having ordered the trial to begin, without a jury and at the conclusion of the trial, the Court, making findings of fact and conclusions of law on the record and directing the Clerk to enter judgment in favor of the defendant and against the plaintiff dismissing the complaint with costs, it is

ORDERED and ADJUDGED that the plaintiff take nothing of the defendant and that the complaint is dismissed with costs.

Dated: Brooklyn, N.Y.
December 22, 1976

Lewis Orgel
Clerk

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Received
of \$ 5/6/17
James (Charles & Kissel)